

Internal Revenue Service
memorandum

CC:TL-N-6001-88

Br.4:RJFitzpatrick

date: **MAY 25 1988**

to: District Counsel, Salt Lake City
Attn: M. Howard

from: Director, Tax Litigation Division

subject: [REDACTED]

This is in response to your April 26, 1988 request for technical advice in the above-entitled action. The issue is whether the Tax Court has jurisdiction over petitioners' claim to an overpayment based on an increase of earned income credit in the amount of \$[REDACTED]. Because of the need to file respondent's brief, it was agreed with your office that a brief arguing no jurisdiction could be filed with the matter referred to us for consideration.

Subsequently, we brought the case of Murphree v. Commissioner, 87 T.C. 1309 (1986) to your attention. In that case, the Service argued that refundable credits are in the nature of payments. 87 T.C. at 1312. In view of the dictum in Murphree, going forward with argument in this case would require reinstituting briefing dates for an expanded argument. Because petitioners are clearly entitled to the \$[REDACTED], we suggested that the case be conceded. No precedent would be set by a concession and the probability of continued litigation by petitioners in another forum would be avoided.

We note that the Technical Corrections Act of 1988 (H.R. 4333 and S. 2238) would cure the defect by clearly providing that the earned income credit be subject to Tax Court jurisdiction. The proposed Committee Report, by way of explanation, merely notes that existing deficiency procedures "may not apply" to the credit. Under the circumstances, concession is justified as a practical resolution of the case.

If you have any questions please contact Robert J. Fitzpatrick at FTS 566-3345.

MARLENE GROSS
Director

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